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IMPORTANT

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LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)

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Rules Governing a Federal Law Action*

By CHARLES C. MONTGOMERY *of the Los Angeles Bar, Author of Montgomery's Manual of Federal Procedure, and Standing Master in Chancery.*

In Part II American Bar Association Journal for March, 1927, the contribution of E. W. Hinton, under the heading, "Court Rules for the Regulation of Procedure in the Federal Courts," is of great interest to federal court practitioners.

In that able artile the author points out that the American Bar Association has been committed for some years to a proposal for a uniform system of rules for the federal practice of law.

Below is submitted a brief outline of the present procedure in an action at law in the federal courts. It shows how numerous federal statutes and local district court rules create non-conformity to state practice. It thus illustrates the disadvantages of the present system of "general conformity to the state practice, except as otherwise provided by various federal statutes." It shows that a uniform system is very much to be desired.

A federal law action by sections 914 and 918 Revised Statutes of the United States is made to conform as nearly as may be to the state practice in courts of co-ordinate jurisdiction in the federal district.

The alleged conformity is misleading. In many points there is a wide divergence creating pitfalls for the practioner who assumes that the practice is the same as in the state court.

Below is a brief outline of the steps in an action in the federal courts, indicating some of the peculiarities of practice in the progress of a case.

I.

Initial Pleading

The practitioner first prepares his initial **pleading**, setting out specifically the ground of federal jurisdiction, and, where material, that the amount in controversy exceeds three thousand dollars exclusive of interest and costs.

II.

Filing Complaint and Praecipe.

The complaint at law is then filed with copies for service, and a praecipe signed and filed for summons, and a check for costs deposited with the clerk. The summons should be prepared with copies. In an equity suit the solicitor files his bill and praecipe for subpoena, the subpoena being the process in equity.

III.

Discovery

At the same time, or until twenty-one days after issue joined, written interrogatories may be filed, under Equity Rule 58, which under some local district court rules has been adopted for law actions, and the defendant is required to answer the same under oath, within fifteen days, unless exeptions are sustained to the interrogatories, and also under section 724 R.S., plaintiff may require, on motion, defendants to produce books or writings for inspection.

IV.

Delivering Papers to Marshal for Service

The clerk issues a summons, in a law action, and certified copies of the complaint to the marshal. Generally a local district court rule governs this matter.

In equity he delivers a subpoena to the marshal without any copies of the complaint.

In the meantime the practioner should step from the clerk's office into the marshal's office to instruct the marshal as to the service of the summons and complaint, and give him a deposit for his fees.

V.

Marshal's Service of Process

The marshal serves and makes his return to the clerk's office. See sections 787 and 788 R.S. and local district court rules.

*EDITOR'S NOTE: *The BULLETIN is fortunate in having secured the following discussion by an authority on this pertinent subject. Mr. Montgomery, prior to his appointment last July as Standing Master in Chancery for the United States District Court, was for the five years preceding, Special Master of Chancery for that court.* MONTGOMERY'S MANUAL OF FEDERAL PROCEDURE (1914) *is a standard text book on Federal procedure in use throughout the country. In* 1918, *Mr. Montgomery edited a second edition of the text.*

VI.

Time to Plead Defensively

The time for defendant to plead at law is governed by local district court rules, which is 20 days in the Southern District of California.

VII.

Examing Marshal's Return—Defaults

Plaintiff's attorney should examine the marshal's return, and if defendant is in default, he orders default in accordance with the state practice.

VIII.

Attachment and Garnishment

Attachment and garnishment may be issued in accordance with state practice under section 915 R.S.

IX.

Service by Publication

One of the peculiarities of the federal practice with regard to attachment is that it may be made the basis for substituted service, as in the state courts, because service by publication under section 57, Judiial Code, does not authorize such service where there is an attachment merely.

In this connection it should be noted that the federal courts are not organized for the purpose of allowing defendants living in other states to be served there but the rules as to service within the state are just as strict in the federal courts as in the state courts, with a few exceptions relating to government cases or where there is special statutory authority.

X.

Defensive Pleading

Demurrers and answers under local district rules conform to state laws as to form and order.

Defendant's attorney should first consider jurisdiction, and if defects appear in the marshal's return defendant should make a special appearance to quash it or the summons at law or subpoena in equity.

Defendant, in equity, instead of demurring, files a motion to dismiss and makes his deposit with the clerk for costs. The pleading should be served before filing.

The answer in equity may set up a special plea, such as defect of parties, misnomer or infancy, and may have this plea separately heard before the trial. This is a great advantage over the state practice.

Under some local district court rules matters in abatement may be set up in the answer in a law action the same as in equity.

XI.

Depositions

Depositions may now be taken within the time and manner allowed by sections 863-870 R.S. inclusive, and court rules.

XII.

Trial Calendar and Setting for Trial

After the time for taking and filing depositions has expired the case is put on the trial calendar to be set for trial.

In the federal courts we have terms of court and the trial calendar is generally called on the first day of each term.

XIII.

Failure to Prosecute

Dismissal for failure to prosecute may be obtained if the complainant has failed to issue process within a year after filing the complaint, or to procure service of summons within 60 days after the issuing thereof, under some local rules.

This is an important difference from the state practice, which frequently allows the summons to be issued and service made within much longer periods.

XIV.

Trial

The case coming on for trial, witnesses and evidence are produced in open court, both at law and in equity, the same as in state practice except that the judge has more freedom in the conduct of the case than in the state practice.

This is one of the peculiarities of federal practice frequently commented upon.

Judge's Prerogative

The federal judge has a large prerogative. He is expected in both civil and criminal cases to comment to the jury on the evidence, to sum it up and give his own views, thus assisting the jury in a correct determination.

Exceptions to Rulings

Another peculiarity of the practice in the federal trial is that exceptions to the judge's rulings should be taken at the time the rulings are made, both at law and in equity.

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Some Observations on the Municipal Court

By CARL A. STUTSMAN, *Presiding Judge of the Municipal Court of Los Angeles*

Approximately sixteen months ago, there was born into the household of California courts a new baby, the Municipal Court. As is usual in the case of the arrival of a new member of the family, considerable speculation arose among the friends and kinfolk. Would it fulfill the expectations of its progenitors? The child was fair to look upon, but much more than good looks was required if it was to justify its existence and accomplish its destiny. The family job of dispensing justice had grown to such proportions that the particular tasks assigned to one of its big brothers, the Superior Court, had become burdensome, and it was proposed to divide the work and give some of it to the new arrival.

Much thought and care had been bestowed upon the preparation of the garments the child was to wear and the wisest legal minds in the State were called upon to propose the necessary constitutional amendments prescribing the jurisdiction of the new court. These amendments were designed to relieve the Superior Court of a portion of its work and give it to the new court. Within the limitations defined by these constitutional amendments, the legislature was required to provide by general law for the creation, regulation and procedure of the new court, and the procedural statutes were amended in numerous instances by changes made in the Code of Civil Procedure. The legislature enacted a general law, commonly called the Municipal Court Act, in 1925, which gave to cities of the State with a population of forty thousand or more the right to create, by appropriate ordinance or charter provision, a Municipal Court.

Although called a Municipal Court, the new court is not, strictly speaking, a city court. Its jurisdiction in many instances is county wide, within, of course, certain Constitutional limitations. Although generally known as a city court, the Boards of Supervisors of the counties wherein such courts are established are required by law to provide and pay for the quarters occupied by such courts as well as all the expenses thereof, including the salaries of the judges, clerk, marshall and subordinates.

Conforming to these constitutional amendments and legislative enactments, the City of Los Angeles, by charter provision, established here a Municipal Court which began to function on February 1, 1926. For upwards of sixteen months, the new court has been busy at its task. How well that has been discharged is not for any of its judges to say. A look backward, however, may not be amiss.

The writer has been graciously accorded the opportunity of presenting a few reflections upon the new court, an opportunity to recite some of its accomplishments and perhaps indulge in some suggestions for the betterment of its procedure.

The new court started out with high resolve and the courage of its convictions. Determined at all times to frown upon questionable practices, the judges have resolutely set about to uphold its honor and integrity and to merit the confidence which, in the lapse of time since its creation, has been accorded by the bar and by the public having business to transact with the court. True, the going has not always been smooth. In the discharge of its duties, the new court has been beset with unexpected obstacles and unforseen difficulties. Upon certain occasions, it has been enjoined and restrained from proceeding. It has been shorn of a portion of its criminal jurisdiction and its right to exist and function as a court has even been questioned in a cause now pending in the Appellate Court.

Clothed by law with the right to hasten the dispatch of its business by the process known as Summary Proceedings, a new judicial power not accorded to any other court within the jurisdiction of California, the Municipal Court, when exercising this right, has been assailed several times because it is claimed the procedure is unconstitutional in not according the right of trial by jury.

Notwithstanding these attempts to

undermine its integrity and to minimize its efficiency, the new court has continued to function in the manner proposed by its framers. An accurate record has ben kept of both the civil and criminal business of the court since its inception, and a daily report is made by the clerks of the various divisions of the court to the Presiding Judge showing the new business filed. This record accurately reflects the new cases commenced on the civil side of the court and the complaints filed on the criminal side. At the conclusion of the first year of its existence, the record shows that 37,390 new cases were filed in the clerk's office on the civil side and 154,972 criminal complaints were filed. The last named included all preliminary hearings on felony charges as well as complaints involving misdemeanors, such as traffic and liquor violations, etc. Of the new cases commenced on the civil side of the court, 9,287, or approximately twenty-five per cent of the total filed, involved money damages in excess of $300.00. Being demands in excess of this sum, these casss could not have been commenced in the Justice Courts and would, of necessity, have been commenced in the Superior Court except for the establishment of the Municipal Court. Manifestly, the new court has been of material assistance to its big brother, the Superior Court.

During the period of time from Feb. 1, 1926 to Feb. 1, 1927 there were filed in the Superior Court 27,827 civil cases, exclusive of probate matters, or approximately 9,500 less than the number filed in the Municipal Court. Curiously enough, the number of cases filed in the Municipal Court involving money demands in excess of $300.00 is approximately the same number of cases by which the Superior Court falls short of the filings in the new court and is almost exactly thirty-three per cent of the total filings in the Superior Court. These figures demonstrate the wisdom of those who, realizing the congestion in the Superior Court and the consequent necessity for relief, conceived and brought into existence this new court. Of the 37,390 cases fiied in the Municipal Court, judgments were rendered by the clerk upon

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The President's Page

Fellow Members
Los Angeles Bar Association:

Through the cooperation of the Judicial Council, Presiding Judge Wood and the joint committee representing the Superior Court judges and the Bar Association, an opportunity is afforded to all attorneys and litigants to advance cases on the calendar for trial during the month of August. During that month a considerable number of judges from other counties will be assigned to sit in Los Angeles County and it is expected that ample provision can be made for the trial of all pending cases wherein stipulations may be filed providing for such advancement. This is an opportunity for the bar to cooperate in the effort now being made to reduce the volume of accumulated business now before the Superior Court in Los Angeles County. It is the desire of the Judicial Council the judges of the Superior Court and the Trustees of Los Angeles County Bar Association that every member of the Bar Association who has litigation set for trial at a date beyond December 1, 1927, make an effort to arrange for a stipulation for the advancement of cases upon the calendar.

In view of the fact that ten new judges have been granted Los Angeles County because of the appalling accumulation of cases, it would seem to be incumbent upon the bar of this county not to allow it to be justly said that we are not prepared to utilize all of the judicial material offered. The Bar Association confidently expects the usual whole-hearted response of its members to this appeal of the Judicial Council.

I have still in mind the project of a Bar Association building. I have always felt that of the three important factors in the erection of a downtown office building; to-wit, the land, the finances and the market, the Bar Association possessed the most important—the market. Any number of height-limit buildings would be under construction today in the downtown district if the owners of the lots and the financiers were assured of occupancy. We are receiving proposals and overtures of more or less definite character which confirm what I have just stated. In the near future I shall announce the appointment of a Bar Association Building Committee and I believe that a building bearing the name of Los Angeles County Bar Association is an accomplishment easily within the realm of probability. In my opinion, such a building will not only provide a home for the Association and greatly add to its prestige but will do more to cement the members of the bar and create a feeling of fraternity and solidarity than any other possible influence.

The two outstanding events in the near future are the plebiscite and the dinner to be given in honor of Governor C. C. Young.

As to the plebiscite, it is not intended that the Bar Association will confine its recommendations to the number to be chosen, nor in fact will the Association make further recommendations to the Governor than to forward to him the entire result of the plebiscite for such information and guidance as he may see fit to utilize. It is not expected that the Governor is to be in any wise bound by the plebiscite. He will receive the results of it as he receives other information from various sources. After all, it is the Governor who must make the appointments and take the responsibility for them; on the other hand the Bar Association feels it a duty to give to the Governor as nearly as may be a cross-section of the views of the bar with respect to the standing of each candidate. One who has the confidence of the bar is naturally regarded as better qualified to hold judicial office than one who has not that confidence. Every member of the Association should take the time to consider carefully the biographical data concerning each candidate which will be submitted with the ballot to the end that the ultimate result finally forwarded to the Governor may be of the highest value in enabling him to arrive at his conclusions.

The meeting to be held on Friday evening, June 24th, should be a notable occasion. Governor Young will be present as the guest of honor and Chief Justice Waste is also expected to attend. A few short talks will be made explaining the nature

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Doings of the Committees

COMMITTEE ON LEGAL EDUCATION

The Committee on Legal Education of the Bar Association began its year's work by forming two sub-committees in order that two important functions of the Committee—i. e. (1) A survey of the law schools of Los Angeles County, and (2) An inquiry among the members of the bar as to what they think would be a desirable collegiate pre-legal course, similar to the inquiry made by the University of Pittsburgh among the practicing attorneys of Allegheny County, Pennsylvania—might be started immediately.

Investigation reveals the fact that there are now seven institutions in Los Angeles County which offer courses in law, and the Committee has prepared and sent to each of these schools a questionnaire with a request that they be filled out and returned as promptly as convenient. The questionnaire was prepared with a view to eliciting complete information regarding the entrance requirements, the faculty, the length and character of the courses given, attendance requirements, and library facilities of each of the schools, following the line of investigation made a short time ago by the Carnegie Foundation for the Advancement of Teaching.

A questionnaire to be sent to the members of the Los Angeles County bar is now being prepared. This questionnaire will concern the opinion of practicing attoreys as to the value of certain pre-legal studies for law students, and the compilation of the returns will undoubtedly result in an interesting and useful document. It is the hope of the Committee that the members of the Los Angeles Bar Association will respond heartily and enthusiastically to the questionnaire and give it serious attention.

Respectifully submitted,

FLORENCE M. BISCHOFF, *Chairman.*

PROPOSED PLAN OF MODIFICATION IN CRIMINAL PROCEDURE

(*Submitted for consideration to the Committee on Criminal Procedure by* MISS CAROLINE KELLOGG, *Secy. of the Com.*)

The plan of modification proposed is definitely to establish a social criminal procedure which would supplant all procedure that now takes place immediately after a prisoner is pronounced guilty.

DETENTION LABORATORY

Under the proposed plan, after a man is found guilty he is automatically committed to a central detention place, or criminal laboratory, where he is confined under observation, for a period of time to be determined.

Here observation is had by a staff of trained experts consisting of a criminologist, physician, psychologist, psychiatrist, and vocational and educational director. The examination by the criminologist is for the purpose of procuring the social and family history of the prisoner, record of past delinquencies, etc.; that of the physician, for giving a rigid physical examination to detect physical defects and diseases that might be the root of criminal impulses, etc.; that of the psychologist to determine the prisoner's mental age, etc.; that of the psychiatrist for detecting mental abnormalties, diseases, etc.; that of the vocational and educational director for determining the prisoner's ability to earn a living, and whether he was doing the work for which he was mentally and physically adapted, etc. Each diagnostician would have the findings of previous examinations before him in dealing with the prisoner.

Finally, all of these reports would be turned over to a clinical director who would organize the findings and make such recommendations as were found necessary to enable the prisoner to make a social adjustment. These recommendations would be made to a judge of the Superior Court who would then commit the prisoner—either to probation under a much more adequate system than we have at present, —or else commit him to that institution which would most adequately assist the prisoner in carrying out the program of

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Ask Me Another

Prepared by MESSRS. MAURICE SAETA *and* FRANK MERGANTHALER *of the Los Angeles Bar*

W. I. Gilbert ..... 100% *
Frank James 48%
W. Joseph Ford 44%

*Your Examiners were amazed at Mr. Gilbert's unerring accuracy in answering the queries, in view of the difficulties encountered by other scholarly gentlemen. However, when the examination was completed, we discovered that, in handing the list of questions to Mr. Gilbert, a set of answers was inadvertently appended thereto. So, Mr. Gilbert's excellent mark is, in reality, one of excellent *reading* ability.

1. Who was William Murray?
2. What was the function of De Ventre Inspiciendo?
3. What case is known as that "venerable error"?
4. What cause celebre had a chimney sweep as the chief figure
5. What have the following in common: Bushrod Washington; Joseph Story; John Marshall?

5.What member of the Supreme Court is related to one of the major American poets?

7. What celebrated constitutional case did steamship navigation give rise to?
8. What celebrated case applied the maxim, "Every man's home is his castle"?
9. What celebrated attorney of the Confederacy left for England and attained greatness there at the practice of law?
10. In what case was the power of National courts over Congressional legislation proclaimed?
11. In what celebrated case was the statement, "The power to tax is the power to destroy" used?
12. When was the Thelluson Act passed and why?
13. Upon what occasion did the Liberty Bell crack?
14. Why is an indenture so called?
15. What was "ship money," and whose name was intimately associated with it?
16. What was the Stellata Camera, and why was it so called?
17. Who were Quirk, Gammon and Snap?
18. Is there any state in the Union where tenure exists?
19. What is the "Ganancial Right"?
20. What is the glaring defect in the trial scene in "The Merchant of Venice"?
21. What are the apostles?
22. "It is, Sir, as I have said, a small college, and yet there are those who love it," was used by whom, and in connection with what leading case?
23. What leading case construed a charter to be a contract?
24. In what poem appeared the couplet:
"Thoughts much too deep for tears subdue the Court
When I assumpsit bring, and God-like waive a tort."
25. Where does the following appear:
"Whilst we were in hand with these foure Parts of the Institutes, we often having occasion to go into the City, and from thence into the country, did in some sort envy the state of the lowest Plowman, and other Mechanics; for the one when he was at his work would merrily sing, and the Plowman whistle some selfe-pleasing tune, and yet their work both proceeded and succeeded; But he that takes upon him to write, doth captivate all the faculties and powers both of his minde and body, and must be only intentive to that which he collecteth, without any expression of joy or cheerfulnesse, whilst he in his work."

SEE PAGE 28 FOR ANSWERS

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

Bar Association Dinner

Meeting and Dinner Friday, June 24, 6:00 P.M., Elite Cafe

GOVERNOR C. C. YOUNG will be the guest of the Los Angeles Bar Association at its June meeting. This meeting will be held next Friday evening, June 24, 1927, at 6:00 p.m. at the Elite Cafe, 633 South Flower Street.

Let us show the Governor our appreciation for what he has done to further the aims and ideals of the Bar of California.

CHIEF JUSTICE WASTE will speak on the Incorporation of the Bar. He will briefly explain the provisions of the State Bar Act and express his views and expectations regarding the practical operation of this measure.

THOMAS C. RIDGWAY, President of the California Bar Association, will comment uopn the significance of the increases in judicial salaries.

ALFRED L. BARTLETT will explain the benefits of Assembly Bill No. 43 and its far-reaching effect upon the election of judges.

W. JOSEPH FORD will speak on the JUDICIAL COUNCIL, who they are, what they are doing, and what they hope to do.

Besides the serious discussion of our own problems we will have the unique pleasure of hearing TOM MIX explain why he makes more in a week than a judge makes in two years.

Our own BAR ASSOCIATION QUARTETTE will sing.

We are assured by our President that all speakers will say something of vital interest to every member of the Asscіation, and all except the Governor and Tom Mix will be limited to ten minutes.

The program will be broadcasted, but every member of the Association is urgently requested to be present on this, the most important occasion of the year. Members may bring guests—wives, sweethearts and friends.

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A Million Orders for Title Insurance and Trust Company

Title Insurance and Trust Company recently received its one-millionth order for title insurance. The order was placed with the Company by Mr. J. A. Graves, President of the Farmers & Merchants National Bank of Los Angeles.

Commenting on the occasion, Mr. William H. Allen, Jr., President of the Title Insurance and Trust Company, said: "It is exceedingly gratifying to know that the public has reposed sufficient confidence in our Company during the past years to enable the number of orders received to reach such a good number. I think it is the care which we have always taken of business given to us which has enabled us to do it."

When Mr. Graves was informed of the fact that his order happened to be No. 1,000,000 upon the records of the company, he said: "I have always been a customer of the Title Insurance and Trust Company. It is the title company which has always done my business. I congratulate the company on its success."

Title Insurance and Trust Company is the largest title insurance company on the Pacific Coast and had a capital, surplus and undivided profits on January 1, 1927, of $9,312,832.37. Title Insurance and Trust Company was organized December 20, 1893, at which time the total population of Los Angeles County was approximately 125,000 people. It was formed by a merger of the Abstract and Title Insurance Company and the Los Angeles Abstract Company. The first offices of the Title Insurance and Trust Company were located at the Northwest corner of Franklin and New High Streets. The building was originally three stories high and two stories were added later as business increased. There were fifteen employees on the first payroll of this company. The company moved to its present location in the Title Insurance Building in April, 1912, and is at present engaged in building a new home office building on Spring Street between Fourth and Fifth Streets. This new home office building will be one of the finest office buildings in the city, being of height-limit and having a frontage of two hundred forty-two feet on Spring Street. The company has grown so that it will occupy approximately five floors of the new building in order to accommodate its eight hundred employees.

The Title Insurance and Trust Company has the distinction of inaugurating the escrow business in the United States. It first opened an escrow department in 1894, and that year handled $55,000.00 in the department. At that time this amount of business fas considered a very large volume of escrow business to be handled in one year.

Mr. William H. Allen, Jr., President of Title Insurance and Trust Company, came to the company in 1895, just two years after its organization. Mr. O. P. Clark, Secretary and Treasurer of the company, has held that office since its organization. Vice-Presidents N. W. Thompson, W. W. Powell, E. L. Farmer, W. C. Davis and J. B. Webber have each served with the Company from twenty-five to thirty-five years.

Title Insurance and Trust Company has affiliated companies at San Diego, Ventura, Bakersfield, Visalia, Riverside and Santa Barbara.

Rarity of Reversals in Criminal Cases

By WILLIAM T. AGGELER, *Public Defender, Los Angeles County*
(Reprinted from the San Francisco Recorder)

There is much criticism abut our criminal procedure. It is believed by the people generally that if a person convicted of crime has money enough or influence enough to have his case appealed he will secure a reversal in the appellate court upon some meaningless technicality (becuase forsooth an "i" is not dotted or a "t" crossed, such is the threadbare illustration given by well-meaning but ignorant critics of our criminal procedure) and because of such reversal he will walk from jail a free man. In short, reversals are almost always to be had for the asking and reversals spell freedom.

A reversal in a criminal case, with very few exceptions, means simply that the defendant is entitled to a retrial of his case. The retrial is granted because he was deprived of a fair and impartial trial in the first instance, because he has not been tried according to law, because he has been denied substantial rights guaranteed him by the Constitution.

An appellant is not always given a new trial merely because the trial court commits error to his detriment, even when it thereby deprives him of the full measure of his rights. Many errors may be committed during the trial of a case and yet the apellate court will affirm the judgment.

The Constitution of California provides as follows:

> No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire case, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. (Section 4½ of Article VI, California Constitution.)

By this section of the Constitution of California every objection, technical or otherwise, known and presented by the most learned and conscientious criminal lawyer or invoked by the unscrupulous, unethical pettifogger avails nothing unless the appellate court is able to say that the error was of such a nature that there has been a miscarriage of justice.

Under this provision of the Constitution there is no presumption of prejudice to a defendant from any error or irregularity arising during the couse of the trial. On the contrary, the Supreme Court of California has held that in a criminal case it must affirmatively appear to the satisfaction of the court that a defendant may well have been substantially injured by the error complained of before a reversal of a judgment of conviction may be had. (181 Cal. 66.) In other words, unless the defendant convinces the Appellate Court by the record that he has been substantially, not technically, injured, that an injustice has been done to him, he will be given no relief even though the Appellate Court concedes there were errors in the matter of procedure; that the pleadings in the case were not according to law; that evidence was improperly admitted when offered against the defendant; that proper evidence offered by the defendant was refused to be given to the jury, and that the jury was improperly instructed as to the law applicable to the case.

Under the Constitution it is the duty of the Appellate Court, in a limited way, to consider the evidence in the case for the purpose of determining from an examination of the evidence whether or not an error as to a matter of procedure, pleading, or the admission of evidence, or in directing the jury, has resulted in a miscarriage of justice. The Supreme Court has held that "unless it shall find that such miscarriage has been caused thereby, the error must be disregarded and the judgment cannot be set aside on account thereof." (179 Cal. 447.) There must be a showing of actual misleading of the jury. In the absence of such a showing the error complained of will be disregarded. (186 Cal. 782.)

Is there anyone who insists upon injustice? Is there anyone who would condemn the courts for granting a retrial where there has been "a miscarriage of justice?" Is there anyone who would criticise the courts of California for righting a wrong so serious that it has resulted in

an actual miscarriage of justice no matter how rich or influential or how lowly or helpless the wronged person may be?

Are our courts breaking down? Do convicted persons escape justice by reason of meaningless technicalities? Is our California criminal procedure a failure? What is the official record?

Murder

Since January 1, 1913, 85 cases where the defendants were convicted of murder in the first degree and sentenced to suffer death have been appealed to the Supreme Court of California.

In eighty-four cases the sentence was affirmed and but one reversed. The case reversed was tried again, the defendant was convicted and sentenced to imprisonment for life.

In over thirteen years not one has escaped punishment. Of the eighty-five sentenced to death, eighty-four upon appeal found no relief from the death penalty. The one defendant whose case was reversed was successful only in changing a sentence of death to one of life imprisonment. For more than ten years last past there has not been a single reversal in California in a case carrying the death penalty.

The official records as to cases following cover the ten-year period from January 1, 1916, to December 31, 1925.

Ninety-five other murder cases were appealed where the penalty was either imprisonment for life or imprisonment for from ten years to life, and in only seventeen of these were the sentences reversed. These seventeen were not dismissed but were granted new trials.

Manslaughter

Fifty cases where defendants were convicted of manslaughter were appealed. Thirty-nine were affirmed and eleven cases were remanded to be tried again—not dismissed on a technicality.

There were 899 other felony cases (excluding murder and manslaughter cases) appealed. Of these 736 were affirmed and 163 cases (18.1%) were reversed. Nearly all of these were tried again and in many instances final conviction resulted.

Reversals in Felony Cases Other Than Murder and Manslaughter Cases.

There have been few reversals in major felony cases during the ten years following January 1, 1916. In that period, in the entire State of California, only seven cases have been reversed where the charge was robbery; ten where the charge was burglary and ten where the charge was grand larceny.

We have given the official record in these foregoing instances, for it is known to every one that murder, manslaughter, robbery, burglary and grand larceny constitute the most serious crimes.

Most of the reversals by the appellate courts occurred in cases of minor felonies, or in cases where the charge was of such a nature that it became a felony or a misdemeanor dependent upon the judgment of the trial court or in misdemeanor cases, in which the Superior Court originally had jurisdiction. For illustration, twenty-six of the 163 cases reversed were cases where the defendants were charged with violations of the intoxicating liquor laws; eleven were reversed where the defendants were charged with criminal syndicalism; six were reversed wherein the charge was omitting to provide for a minor child.

From the fact that the greater number of reversals have been for minor offenses it is not to be understood that the appellate courts are less likely to reverse a case wherein the appellant is charged with a very grave crime than where the charge is less serious.

The reason for the few reversals in cases charging murder, manslaughter, robbery, burglary and grand larceny is that the trial court is more impressed with the seriousness of the charge and exercises greater care in the trial of the cause; whereas, when a minor offense is on trial this studious carefulness is now always apparent.

When the record of the courts is examined and the result of how they function under our Constitution and our laws in California, not elsewhere, is presented to us, we may point with pride to this Constitution and these progressive laws because under them the rights of the innocent are protected and the guilty punished. Our criminal courts are not breaking down. Our criminal procedure is not slow and antiquated but very progressive. Under our Constitution technicalities have no potency. Trivial errors avail not. Only such errors as affirmatively show substantial injustice has been done the defendant are recognized by the court. Who amongst us would be unjust?

Case Notes*

WILLIAM E. BURBY *of the Los Angeles Bar*
Professor of Law, University of Southern California

QUERY: WHEN ARE SECURITIES (stocks, bonds, etc.) ISSUED IN THE STATE OF CALIFORNIA VOID?

The California Appellate Court has ruled, in three interesting decisions rendered since February, 1927, that securities issued in California in violation of the terms and conditions of the permit, as well as when issued without a permit, are void.

Section 12 of the Corporate Securities Act, Chapter 532, Statutes of 1917 and subsequent amendments, provides as follows:

"Every security issued by any company without a permit of the Commissioner authorizing the same then in effect shall be void, and every security issued by any company with the authorization of the Commissioner but not conforming in its provisions to the provision, if any, which it is required by the permit of the Commissioner to contain, shall be void."

Before these questions were decided by our courts, it was the general opinion of members of the Bar that Section 12 of the Corporate Securities Act would be construed to mean that securities issued in violation of the terms and conditions of the permit were voidable and not void.

It was also held by many attorneys that securities issued without a permit, under certain circumstaces recognized in equity, might be merely voidable.

One of these questions was first decided in the case of *Honn v. Hamer*, decided February 8th, 1927. This was an action to enforce stockholder's liability. The defense was made that the alleged stockholder's liability was based on an agreement entered into by the defendant for the purchase of stock in American Ice Machine Company, a corporation, and that at the date of the agreement for the sale of the stock, the corporation did not have, nor had it applied for or obtained a permit from the Corporation Commissioner to sell or dispose of its capital stock.

The court in substance held—

1. That it was a good defense in a stockholder's liability suit that the alleged subscription contract, or securities issued without a permit, was void, and that therefore no stockholder's liability can be enforced against such subscriber.
2. That the fact that the stockholder participated in meetings of the corporation did not change the situation. The court says: "In other words, the corporation having not legal rights against the defendant, its creditors could have none."

Honn v. Hamer, 52 Cal. App. Dec. Page 427.

Another interesting case is *Otten v. Riesener Chocolate Co.*, decided March 26th, 1927. In this case the defendant corporation had a permit to sell and issue its securities in this State, which premit provided, as nearly all permits provide where sales are made to the genral public, "that a true copy of the permit be exhibited and delivered to each prospective subscriber or purchaser of said stock before his subscription therefor shall be taken or any sale thereof made."

Plaintiff sued for the recovery of the purchase price of said stock on the ground that there had not been exhibited to him a true copy of the permit before his subscription was taken, and the court held that the contract for the sale of the stock, where that condition had not been complied with, was illegal and void and that the purchaser, therefore, was entitled to the return of the purchase price of his stock.

The court further held that the Corporation Commissioner has the right to impose such a condition in issuing his permit.

Otten v. Riesener Chocolate Co., 52 Cal. App. Dec. Page 839.

Within a few days following the decision in the *Otten v. Riesener Chocolate Co.*

*EDITOR'S NOTE: The BULLETIN will be pleased to accept for publication reviews of, and comments on, recent decisions, and members of the bar are urged to co-operate with Mr. Burby in effectuating the maintaining of *Case Notes* as a noteworthy feature of the BULLETIN. Reviews should be mailed to the office of Mr. Burby, 3660 University Avenue.

case, our California Appellate Court further held that a purchaser of stock is entitled to a return of the purchase price of the stock where the same had been unlawfully issued in this State, together with interest on the amount of his investment, even though the securities had not been purchased direct from the company but from a shareholder who had acquired the same direct from the company. The theory of recovery was that the purchaser of shares has a right to rely upon the implied representations that the certificate is genuine and has been lawfully issued. The court further held that it is no defense that the Commissioner of Corporations had advised the officials of the issuing company that it was not under the Commissioner's jurisdiction and that no permit would be required.

The court held further that it was no defense that the association, subsequent to the issuance of said shares, had obtained a permit from the Commissioner authorizing it to sell and issue its securities and had offered to the plaintiff the exchange of validly issued shares for those issued without a permit. The court gave judgment to the plaintiff and against the association as well as against its Trustees for a return of the full purchase price paid by the plaintiff, together with interest from the date the certificate was issued to him. This opinion was given by Houser, Presiding Justice, and concurred in by Conrey, Justice, and York, Justice. (See *Boss v. Silent Drama Syndicate, an unincorporated association,* 52 Cal. App. Dec. page 870.

These decisions are now the law on the questions involved. It is clear that the court has greatly strengthened the position of purchasers of securities issued under California law.

ERNEST K. HARTMAN,
of the Los Angeles Bar.

MUNICIPAL SWIMMING POOL—LIABILITY OF CITY FOR DEATH BY DROWNING.

The Supreme Court of Colorado in *City of Longmont v. Swearingen,* 254 Pac. 1000, April 4, 1927, held that the parents of a sixteen year old boy who drowned in a municipal swimming pool during the absence of a life guard, may recover from the city the probable pecuniary benefiit reasonably expected from the continuance of life beyond minority. A judgment for $3,500 against the city was affirmed.

Evidence introduced at the trial was held to be sufficient to sustain a finding that the city's failure to have a guard at the pool, was the proximate cause of the death. "While it is true that there was no direct evidence that, if a life guard had been present, death would not have resulted, yet we think the facts and circumstances proven were sufficient, together with the inference which may logically be drawn from the evidence, to justify the finding that a failure to have a life guard there was the proximate cause of death," said the court. It was in evidence that the person employed as a life guard had been on duty at the swimming pool continuously prior to the 17th of August, 1924, the day of the drowning, but was absent, with the knowledge of defendant, on that date.

On the question of the amount of recovery the court observed that although there could be no direct evidence of what the deceased could or would do in the way of support of the family after he would have reached his majority, the courts of Colorado had settled (citing cases) that a recovery may be had for the probable pecuniary benefit which the parents may reasonably expect from the continuance of the life beyond the minority of the deceased. Factors to be taken into consideration in determining the amount are the child's disposition and ability to contribute to the parents' wants and necessities during the parents' probable duration of life, and the parents' age, occupation, health, pecuniary condition, and probable wants.

This decision is a commendable one. It represents the present trend away from the point of view that "the King (sovereign) can do no wrong." The opinion contains no discussion of the activities of a municipality in its private as distinct from its public capacity.

R. L. OLSON *of the U.S.C. Law Faculty.*

DOINGS OF COMMITTEES

(Continued from Page 11)

social adjustment laid down by the Detention Laboratory Board.

INSTITUTIONS

We would, of necessity, need different equipment, by way of institutions, in order to carry out his program. First, we would need a big General Hospital to treat dis-

eases, perform necessary operations, etc. Secondly, we would need an institution to take care of the criminally insane and mentally defective, or feeble minded. Fourth, we would need a large Vocational and Industrial School, and lastly we would need a colony for permanent segregation of hopeless criminals who are neither insane, nor mentally defective, and who cannot make the social adjustment required by the Detention Laboratory Board. And we would also need a more adequate Parole and Probation Organization.

Sentence

The plan of sentence, or commitment, would be something as follows: If a prisoner was not recommended for probation by the Detention Laboratory Board he would be detained in some of the institutions until he was recommended for parole. He would not be sentenced for a definite time, but would be quarantined until he was cured. No element of punishment would be considered in fixing a sentence. And before any prisoner is recommended for parole he must have the recommendation of the Vocational and Industrial School to the effect that has the necessary educational and trade qualifications to earn a living or else he must have acquired such information through attendance at such school. In other words, this vocational and educational institution is the final door through which every prisoner must pass before being paroled. For instance, a man who had been committed to the institution for the criminally insane, or to a hospital as having been mentally sick, upon being discharged as cured from these ailments by the superintendent of these institutions, would automatically be committed to the vocational and industrial school for attendance and further recommendations before he would be subject to parole. A system in vogue in some of the eastern penitentiaries could be applied in the Vocational and Industrial School, of paying a small compensation to the inmates for work that reaches a certain degree of perfection, part of which money could be contributed to his dependents, or kept for him until he was paroled so that he would not leave the institution destitute.

Finances

The financial obligation incident to a new system would be heavy, but could be managed in such a way that it would not be impossible or difficult. New York recently floated a long time bond issue for fifty million dollars with which to procure money to build new State institutions. More recently they floated a second bond issue for one hundred twenty-five million dollars to modernize all of their State institutions. In this way the coming generation, who would derive the benefit from the use of the institutions, help pay the expense.

The State of California could issue a bond issue, for say, fifty million dollars, which would finally mature in sixty years, the first million to mature in ten years after the issue is floated, and one million each year thereafter until finally matured.

The Segregation Colony could be made self supporting; the Vocational and Industrial Home, more than self-supporting, —it could provide supplies for the General Hospital, and a number of other institutions; and the Institution for the Feeble Minded and Criminally Insane could be made partially self supporting.

By the addition of perhaps, half a million dollars invested in more equipment to develop the rock quarries at Folsom, a mill for making linens, rugs, and bedding for State institutions, machinery for the manufacture of chairs, institutional furniture, etc., and the establishment of a small cannery, and implements for the more intensive farming of the agricultural land, this penal institution could be turned into a very adequate Segregation Colony. And, by an investment of perhaps a million dollars in machinery and equipment, San Quentin could be turned into a big Industrial and Vocational School. The property purchased for the Home for Delinquent Women, or for Pacific Colony (if still available) could be used for the Institution for the Feeble Minded.

We might need to maintain two Detention Laboratories in order to save travelling expenses,—one for San Francisco, and one near Los Angeles.

The Woman Criminal

One of two methods could be used in handling the female criminal—either we could put a Women's Department in practically all of these new institutions, or else we could have one big institution for women carrying all of the other institutional features, as departments.

Book Reviews

By HARRY GRAHAM BALTER *of the Los Angeles Bar*

NO-PAR STOCK: Legal or Financial, Economic and Accounting Aspects; Carl B. Robbins, M.A., Instructor in Economics, Stanford University, 1927; (IX) 228 Pages; Ronald Press Company, New York; Price $4.00.

Lawyers who deal with the affairs of corporations are of little worth to their clients unless they understand both the law and the business principles involved in any given situation. Questions of capitalization; stock issues, voting power, dividends and the like, cannot be properly handled by the attorney who has not a keen understanding of the business, financial and accounting problems involved. His knowledge of these extra-legal principles must guide the attorney when he is confronted with a choice between several equally "legal" methods of handling a given problem.

This is notably true of the problem which is confronting more and more attorneys and directors of corporate affairs; namely, whether or not any given number of shares of stock in a corporation shall be created with or without a par value. Granted that no-par stock may under certain conditions be issued by corporations, the more important questions to be decided are:—which of the two forms of stock shall be issued? —should the stock be all of one type, or should it be mixed? It is obvious that the answer to these questions would depend as fully upon the understanding of economics and finances as it would upon a knowledge of law.

NO-PAR STOCK, by Mr. Robbins, is a attempt to help the lawyers, corporation directors, financiers, and the accountants to cope with these problems. It is written not by a lawyer, but by an economist. The book is not intended either as a justification of or a denunciation of the ever-increasing practice of forming no-par stock corporations. It is essentially a treatise—presenting all of the favorable and unfavorable aspects of no-par stock issues.

Part I. Discusses the legal, financial and economic problems and treats of, Nature of a Share of Stock; Market Value, Book Value, Par Value; Functions of Par Value; Stated Capital with No-Par Stocks; No-Par Stock from Corporation's Standpoint; No-Par Stock from Stockholder's Standpoint; No-Par Stock from Corporate Creditor's Standpoint; No-Par Stock from Standpoint of the Public Interest; Suggested Changes in Present No-Par Stock Laws.

Part II. Discusses the accounting problems and deals with, No-Par Stocks on the Balance Sheet; Authorization and Subscription; Surplus and Treasury Stock; Miscellaneous Problems. There is also a valuable Appendix, containing "Synopses of the No-Par Stock Laws," of the various states permitting such stock.

Some of the comments of the author are decidedly valuable and interesting.

After pointing out the well-known evils of par value stock, and the gross unfairness of the so-called "Good-Faith" rule, which protects the directors of par value corporations from liability to stockholders of creditors of the corporations where property has been accepted at a greatly boosted price in exchange for stock which is then sold to the public, the author says:

"The law, in fact, legalizes swindle within wide limits. It was enacted ostensibly to overcome a difficulty with par value. The removal of par value will not void the law—to wit, the Bartlett swindle—but it will demand a better law * * * * Cases paralleling the Bartlett swindle will arise in a number great enough to command protective legislation. Strong public sentiment will prevent a reversion to the old rules of valuation. Eventually laws will be enacted which will require accurate valuation of all properties received for stock, and we shall have passed through a cycle, which culminates where we first began—with full protection to investors and creditors, but without protection to the directors who accept properties at excessive valuations." (Page 112)

Speaking of the disadvantages of no-par stock to the public, we read: "The last bar to swindle has been lowered.

The recent Bartlett swindle must go down as judicial testimony and conclusive proof that no-par stock under the present laws, which fail to require valuation of property accepted for stock without par value, do open the way for greater swindle. The court itself intimated as much when it said, 'If this stock had possessed a par value, a different question would arise.' The statement implies that the promoters would have been liable on unpaid subscription to the worthless shares they sold the public. But the stock did not have a par value, and the no-par value stock laws were so defective that the court in its application was forced to let the promoters esape with the investors' funds.

It is in the light of its results that the absurdity of a defective law is manifest. Failure to amend these laws means public destruction of private savings. * * * * * * After notice of the facts has been given, failure on the part of our legislators to amend these laws can be termed nothing short of refusal to act in the public interest." (Pages 313-314)

After weighing the advantages and disadvantages of no-par stock and making valuable suggested changes in the present laws, Mr. Robbins concludes:

"We have seen that all the disadvantages of no-par stocks can be removed by amendment of our present laws, that none of the disadvantages is inherent in the theory of par value, and that no-par stocks under appropriate laws would be a material contribution to the public welfare. We need not be concerned with whether no-par stock will be to the best interest of all concerned under the present laws, when it is known that, whatever be their net effect today, no-par shares may be turned to great advantage by amending our present laws.

"The theory of shares without par value is sound. It is a potential contribution to economic prosperity. But so far it has been held in check by defective laws. Our first attempts to give effect to the theory of no-par shares were feeble. But since the first no-par stock act became effective we have had fourteen years in which to learn from experimentation and to give the problems full consideration, and today we know many of the defects of those first laws, and, what is more important, we know how

no-par stocks may be employed to support a still greater economic supremacy." (Pages 125-126)

This little volume is warmly recommended to the bar as an intelligible and not too technical study of an important phase of corporate study.

A DICTIONARY OF MODERN ENGLISH USAGE; H. W. Fowler; 1927; 742 pages; Oxford University Press. American office, New York City.

To say that we were entertained by this compact book, which is admittedly only a dictionary, might lay us open to the accusation that we were guilty of a paradox, the average dictionary being anything but interesting. Nevertheless, despite its forbidding appellation, we found this book by Mr. Fowler to be distinctly intriguing. We expected to see a dry-as-dust compendium of many words, dully proclaiming its scholarliness, as is the case with most dictionaries. Instead we found an interesting collection of words and phrases, arranged alphabetically but designed to express ideas instead of words. In reality the book is more a thesauris than a dictionary, being rather an analytical compilation of idioms, colloquillisms, and usages than a list of words.

The style of this work is extremely readable, almost chatty in fact. A few excerpts may serve to illustrate its general tone. "*Collocutor, colloquist, interlocutor,* and rival candidates for a part that undoubtedly ought to be filled; we all need occasionally a single word to stand for the 'other speaker,' the person who was talking, to a being talked to by me, you, him or her. None of the three is very satisfactory, but if two could be rejected, the third would have a better chance." "*Distinctly* in the sense 'really quite,' is the badge of the superior person indulgently recognizing unexpected merit in something that we are to understand is not quite worthy of his notice." A gem is "*electrocute—ution.* This barbarism jars the unhappy latinist's nerves much more cruelly than the operation denoted jars those of its victim." Numerous other equally fascinating definitions make the seven hundred odd pages contained in this one-volume book highly interesting reading, considering the nature of the subject matter.

Despite its easy style the book clearly demonstrates great scholarly effort and research on the part of its author. It is undoubtedly the result of many years of analysis and correlation.

From the lawyer's point of view it cannot be denied that *A Dictionary of Modern English Usage* will be a direct help to win his case for him. It is far from being a Wigmore, a Tiffany, or even a Bouvier; but presenting as it does, many words and phrases in a new array, and setting them forth in the light of common usage and connotation, it cannot but serve to enlarge the vocabulary and extend the realm of ideas, and thus in its indirect but potent way go far to help the truly able member of the bar.

THE PRESIDENT'S PAGE

(Continued from Page 10)

of several of the constructive measures affecting the administration of justice which were passed by the last legislature and approved by the Governor. In this respect the meeting will be in the nature of a jubilation upon the adoption into law of measures marking historic advances in the administration of justice in this state. Let us make this the largest Bar Association meeting held thus far.

KEMPER CAMPBELL.

BAR ASSOCIATION DINNER

(Continued from Page 14)

If you cannot attend the dinner you are welcome to come in later for the program.

Remember the date: *Friday, June* 24, 1927, *at* 6:00 *p.m.*

Elite Cafe.

$1.50 *per plate. Informal.*

FRANK G. TYRELL, *Chairman*
W. TURNEY FOX
CONSTANCE LEITCH
LEON YANKWICH
LEO ROSECRANS
MAURICE SAETA
KIMPTON ELLIS
CHAS. B. HAZLEHURST
CAROLINE KELLOGG
RALPH BROWN
Committee.

FEDERAL LAW ACTION

(Continued from Page 6)

XV.

Decrees and Subsequent Proceedings

The winning party prepares the judgment, submitting it to the other side for approval as to form, under local rules.

At law the verdict, judgment, motion for new trial, stay of execution and manner of levying execution may all conform to the state practice.

XVI.

Appellate Review

Appellate review is by writ of error—in equity by appeal. The procedure is the same in both cases. The only difference is in the scope of the review, which at law is only as to errors of law and in case of error there must be reversal and new trial in order to preserve the right to trial by jury. Whereas in equity the appeal brings up the whole record for review and the court may affirm, modify or reverse.

Conclusion

Under the present system it is necessary for the practitioner who practices in both state and federal courts to learn three systems: (1) state practice, (2) federal equity practice, and (3) state practice in a law action as modified by numerous federal statutes and rules.

(In a note appended hereto is a partial list alphabetically arranged of the federal statutes which may affect an action at law.)

To master the procedure at law in the federal court the practitioner must consult state statutes and court rules, federal statutes and local district court rules.

Very few additions would be required to the present federal equity rules to adapt them to procedure at law and a uniform system could thus be easily obtained.

This would greatly simplify the work of the judges and lawyers and give more time for the development of the merits of the case, which is the real object of the proceedings.

SOME STATUTES AFFECTING THE PROCEDURE IN COMMON LAW ACTIONS IN THE FEDERAL COURTS.

Adjournments, secs. 955-959 R.S., Non-conformity to state practice.

Ammendments, sec. 954 R.S., Non-conformity to state practice.

Appraisal Personal Property on *fieri facias* sale conforms under sec. 993 R.S.

Attachments and Garnishment, Conform under sec. 915 R.S., except secs. 924-932 in postal suits, sec. 5242 R.S. None against national banks. Does not conform as to service by publication.

Arrest, conforms under secs. 990, 991 R.S.

Bill of Exceptions, sec. 953 R.S., C.C.A. Rule 10, Sup. Ct. Rule 4. Does not conform to state practice.

Competency of Witnesses, conforms under secs. 858 and 861 R.S.

Consolidation, sec. 921 R.S. Non-conformity to state practice. n

Continuances, secs. 955-959 R.S. Non-conformity to state practice.

Costs. There are a large number of special statutes on this subject.

Defaults, may conform under sec. 918 R.S.

Depositions, secs. 863-870 inc. R.S. Under Act Mar. 9, 1892, c. 14 mode of may conform but not grounds.

Discharge from Arrest, conforms under sec. 991 R.S.

Discovery, sec. 724 R.S. Non-conformity to state practice.

Dissolution of Attachment, conforms under sec. 923 R.S.

Exceptions, secs. 953, 700 R.S. Does not conform to state practice.

Executions, conform under sec. 916 R.S. but under secs. 985, 986 as to where they run and sec. 987 as to stay they may not conform, while sec. 988 allows stay for one term where state law so allows.

Evidence. There are a large number of statutes on this but see Competency of Witnesses above.

Findings by Judge, sec. 1011 R.S.

Garnishments, conform under sec. 915 R.S. but not under secs. 935-937 R.S. suits by government against corporations.

Imprisonment, conforms to secs. 990, 991 R.S.

Interrogatories, sec. 724 R.S. non-conformity to state practice.

Interest on Judgment, conforms to sec. 966 R.S., bonds sec. 963 R.S., debentures sec. 965. R.S.

Judge, Trial by, conforms to secs. 649, 700, 1011 R.S.

Judgments, Interest on, secs. 963 bonds, 965 debentures, 966 conforms, R.S. Effect and lien of, conforms Act Aug. 1, 1888 c. 729.

Judgments, money payable, conform to sec. 962 R.S.

Jury etc., special federal statutes.

Motion for New Trial, conforms to sec. 269 Jud. Code.

Pleading and Practice, conform to secs. 914, 918, R.S.

Process, conforms to except secs. 911, 912, R.S.

Service of Process, secs. 787, 788 R.S. does not conform to state practice.

State Rules of Decision, conform to sec. 721 R.S.

Statute of Limitations, there are a large number of special statutes on this subject.

Stay of Execution, secs. 987, 988 R.S. nonconformity to state practice.

Subpoenas, secs. 876, 877, 4073, 4906, 4908 R.S. and other special acts and sec. 268 Jud. Code.

Trial by Judge, secs. 649, 700, 1011, R.S.

Venue. There are a number of Judicial Code sections on this subject and other special provisions.

Witnesses. There are a large number of special statutes on this subject.

MUNICIPAL COURT

(Continued from Page 9)

defaults in 9,556 cases and by the judges of the various divisions, after trials, in 9,897 cases. From the last named judgments only 247 appeals were taken to the Superior Court, and of such appeals, only 20 cases were reversed and remanded for re-trial in the Municipal Court. These figures constitute an eloquent recital, not only of the efficiency but of the proficiency of the new court.

Not only is the Municipal Court establishing "its place in the sun" but its growth is keeping pace with the growth of the great city whose name it bears. Illustrative of this statement is the fact that the business of the court shows an increase in number of new cases filed of approximately fifteen per cent. In April, 1926, 2,989 new cases were filed and in April, 1927, the number of new cases filed was 3,419. Of these filed in April, 1926, 699 or about twenty-five per cent were cases involving money demands exceeding $300.00 in amount, and the record for April, 1927 shows that about one-fourth of the new cases involve amounts in excess of $300.00. While these figures may be uninteresting to the readers of the BULLETIN, they support the claims made for the new court that it has been and will continue in the future to be increasingly helpful in relieving the congestion of litigation which threatens to engulf the Superior Court. It is to be regretted that the framers of the legislation which created the new court could find no way to compel a transfer to the new court of a large number of civil causes now pending in the Superior Court involving money demands of a thousand dollars or less, and not calling for the exercise of equitable or other powers not lodged in the new court. Presumably this can be accomplished only by a written stipulation of counsel on both sides of such cause with the consent of the litigants, submitting themselves to the jurisdiction of the new court.

The situation is further complicated by constitutional provisions fixing the jurisdiction of the respective courts, the jurisdiction being concurrent in certain cases only. Doubtless the relief from congestion will not become real until the actions already commenced and now pending in the Superior Court have either been tried by that court or otherwise disposed of. In other words, the assistance to be rendered by the new court can have reference only to new cases to be hereafter filed and lapse of time alone will bring the relief so devoutly sought. It is refreshing to note that the Municipal Court is keeping abreast of the flood of new litigation of which it has jurisdiction, new litigation necessarily arising from the increase in population of our city and the marvelous development of our industrial and agricultural resources. It is the firm belief of those in charge of the new court that it will fulfill the fondest expectations of its framers and continue to be a genuine help to its "big brother" courts.

Ask Me Another Answers

(Questions on Page 12)

1. Lord Mansfield.
2. A writ to inspect the body where a woman feigns to be pregnant to see whether she is with child.

3. Dumpor's case.
4. Armory v. Delamiree, Vol. 1, Smith's Leading Cases.
5. Members of the Supreme Court at the time that John Marshall was Chief Justice.
6. Oliver Wendell Holmes.
7. Gibbons v. Ogden.
8. Semaynes case, Smith's Leading Cases.
9. Judah Benjamin.
10. Marbury v. Madison.
11. M'Culloch v. Maryland.
12. Thelluson Act, 1799, to prevent accumulation.
13. Tolling the death of Chief Justice Marshall in 1835.
14. Before the recording acts, deeds were written in duplicate on a single sheet of parchment, and both executed. They were then cut apart by an irregular curved line, and one part given to the grantor, and the other to the grantee. When brought together, the cuts matched, and served to authenticate the parts.
15. John Hampton.—An imposition formerly levied on port towns and other places for fitting out ships, and revived by Charles I.
16. It was the notorious and oppressive criminal court in England known as the "Star Chamber," and was so called by the fact that stars were painted on the ceiling.
17. A firm of shyster lawyers in Warren's "Ten Thousand a Year."
18. Yes, Pennsylvania.—Ingersoll v. Sargent, 1 Wh. 337; Wallace v. Harnstead, 15 Pa. 492.
19. A right under the civil law, from which our community property law is derived.
20. It starts out as a civil action to recover a penalty on a bond, with Shylock as the plaintiff, and winds up as a criminal proceeding with him as defendant, charged with an attempt upon the life of the merchant.
21. A record in admiralty proceeding.
22. Daniel Webster in arguing Dartmouth College case.
23. Dartmouth College case.
24. "The Circuiteers" by Adolphus L. Q. R. i. 233.
25. The Epilogue to the fourth part of Coke's Institutes.

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